

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5695 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NATUBHAI DAUDBHAI HARIJAN

Versus

CHIEF OFFICER

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Appearance:

MR SS BELSARE for Petitioner

SERVED for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/02/98

ORAL JUDGEMENT

Learned advocate Mr. Belsare appearing for the petitioner is not present on call. The respondents though served are not represented before me.

2. This petition arises out of an order of eviction made by the respondent Anand Municipality (hereinafter referred to as the Municipality) on 29th July, 1986 against the petitioner.

3. It appears that one Jiviben Daudbhai was serving as a sweeper in the Municipality and was allotted a residential quarter by the Municipality. The present petitioner being her son was residing with said Jiviben in the said residential quarter. The petitioner was also serving as a motor worker in the Municipality. The said Jiviben died on 21st March, 1986. Pursuant to the death of said Jiviben, the petitioner, under the impugned notice dated 29th July, 1986 was called upon to vacate and hand over the possession of the residential quarter allotted to late Jiviben. Feeling aggrieved, the petitioner has preferred this petition.

4. It is the claim of the petitioner that the petitioner and his wife both are serving in the Municipality and both are entitled to a residential quarter. However, since they were residing with late Jiviben in the residential quarter allotted to her by the Municipality the petitioner was not allotted a residential quarter by the Municipality. It is a convention that on death of a municipal servant, the residential quarter allotted to him/her would be transferred to his/her near relative if such relative were residing with the deceased employee and were also serving in the Municipality. A list of such instances is annexed to the Petition at annexures D and D 1.

5. Ordinarily a residential quarter allotted by the Municipality to its employee should be vacated and the possession should be handed over to the Municipality on the death or retirement of such employee. The relative of such employee residing with him/her would have no right to keep such quarter after the death of the municipal employee. Even in the event of such relative serving in the Municipality, he would have to make an application for allotment of residential quarter and he/she can be allotted such quarter only in accordance with his/her position on the waiting list. However, in the present case, the petitioner has stated on oath that the Municipality has adopted a policy to transfer the residential quarter to the relative of a deceased employee if such relative is residing with municipal employee and also serving in the Municipality. The statement made on oath is not controverted. Besides, the petitioner has now occupied the quarter allotted to his late mother for nearly 12 years after the death of her mother. Even in the ordinary course he should have been allotted a residential quarter by this time. I, therefore, do not consider it expedient to uphold the action of the Municipality and to compel the petitioner

to vacate the residential quarter occupied by him for nearly 12 years. Besides, under Order dated 14th September, 1987 this Court had admitted the petition to final hearing and had granted ad-interim relief staying the impugned order. However, liberty was reserved to the respondents to move the court for vacating and/or modifying the interim relief even by filing a note. The liberty granted to the respondents has not been availed of by them and the interim order has been permitted to operate for more than 11 years.

6. Petition is therefore allowed. The impugned notice dated 29th July, 1986 is quashed and set aside. This order however shall not be treated as precedent. Rule is made absolute accordingly. There shall be no order as to costs.

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